

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of MCI, WorldCom, or MCI WorldCom, (U-5011-C, U-5378-C, U-5253-C, U-5278-C), to determine whether it has violated the laws, rules and regulations governing the way in which consumers are billed for products or services, by billing its former customers for a monthly service charge without authorization.

Investigation 05-04-018
(Filed April 21, 2005)

DECISION APPROVING SETTLEMENT**I. Summary**

This decision approves a settlement of the Commission's investigation into slamming and cramming activities of MCI, WorldCom, and MCI WorldCom (collectively, MCI). Both parties to the proceeding have agreed to the settlement. We find that the settlement is (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest, in accordance with Commission Rule 51.1(e). Thus, we approve the settlement and dismiss this Order Instituting Investigation (OII) with prejudice.

Under the parties' Settlement Agreement, attached hereto as Appendix A, MCI will pay \$2.3 million, in addition to credits it has already paid to affected customers. (MCI estimates its past credits to be in excess of \$1 million.) The \$2.3 million will be allocated in three parts:

- (1) *\$1 million in credits for period October 1, 2005 through May 31, 2007.* MCI will pay up to \$1 million of the \$2.3 million settlement figure in refunds or credits to customers affected by the conduct alleged in the OII. This \$1 million will cover payments issued and to be issued for the period October 1, 2005 through May 31, 2007.
- (2) *\$1.3 million payment to state General Fund within 30 days of this decision.* MCI will also make a payment of \$1.3 million to the state General Fund within 30 days after the Commission's approval of the Settlement Agreement.
- (3) *Potential further payment to state General Fund.* If the payments in (1) above are less than \$1 million, as evidenced by an accounting MCI will make no later than September 30, 2007 of how the settlement proceeds were distributed, it will pay the balance to the state General Fund.

II. Background

A. The Investigation

In 2002, the Commission's Consumer Protection and Safety Division (CPSD) began noticing a pattern of complaints to the Commission regarding MCI's practice of billing non-customers a minimum usage fee (MUF). After reviewing approximately 200 MUF complaints, interviewing 115 of these consumers, and obtaining 77 declarations from consumers documenting their experiences, CPSD brought its investigation to the full Commission for further action.

CPSD found that MCI billed consumers a monthly service charge after the consumers requested that MCI terminate their long distance service, and also in instances where the consumers were never MCI customers. CPSD alleged that MCI relied upon certain codes that it received from Local Exchange Carriers (LECs) to assess the charges. According to CPSD, the codes MCI relied upon were not the proper codes to indicate that a consumer intended to establish a

new account. Nevertheless, CPSD alleged, MCI proceeded to establish accounts and bill non-customers for an MUF without: (1) first attempting to contact the customer to verify that the customer intended to subscribe to MCI; or (2) checking its own records to determine whether the individual was no longer a customer because he or she had previously terminated service with MCI.

The Commission initiated this investigation based on CPSD's allegations that the MCI's practice in connection with the foregoing certain MUFs constituted unlawful "slamming" and "cramming." Pub. Util. Code § 2889.5 requires a telephone company to obtain confirmation from a prospective customer that the customer intends to switch telephone companies; any change in service provider that is accomplished without complying with the steps described in § 2889.5 constitutes "slamming." CPSD asserts that MCI engaged in "slamming" by switching service providers or establishing a new account for a consumer without confirming the consumer's intent to switch to MCI or establish a new account with MCI.

Pub. Util. Code § 2890(a) states "A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized." Including unauthorized charges is a practice commonly referred to as "cramming." CPSD asserts that MCI's engaged in "cramming" by placing MUFs on non-customers' phone bills, in violation of § 2890(a).

B. The Settlement

On October 3, 2005, CPSD and MCI filed a joint motion indicating that they had conducted extensive negotiations over the preceding several months,

had arrived at a settlement,¹ and desired Commission approval of their Settlement Agreement.

1. Monetary Payment

a. \$1 Million, With Remainder (If Any) to State General Fund After September 30, 2007

In the Settlement Agreement, attached as Appendix A to this decision, MCI agrees to pay a total of \$2.3 million in settlement proceeds, with \$1 million of that amount set aside to give credits or refunds to persons who paid the improper MUFs. MCI will pay this \$1 million for people seeking refunds during the period October 1, 2005 through May 31, 2007. The \$1 million is supplemental to amounts MCI credited prior to October 1, 2005, which MCI estimates at more than \$1 million.

If the \$1 million allotted for October 1, 2005-May 31, 2007 is not all paid in refunds or credits, MCI will pay the remainder to the state General Fund. MCI will determine whether there is a remainder no later than September 30, 2007. At that time, it shall make an accounting to CPSD of any difference between \$1 million and the amount it has credited. If this amount equals \$1 million, MCI will not remit any of the \$1 million credit amount to the state. If it is less than \$1 million, MCI will remit the balance to the state General Fund.

b. Liberal Credit Policy

Pursuant to the Settlement Agreement, MCI will have a liberal MUF credit policy. MCI's customer service representatives (CSRs) will credit consumers

¹ At a June 29, 2005 prehearing conference in this case, the case was set for hearing on October 11-14, 2005. The motion we approve today was filed just before the hearing, and the hearing therefore did not occur.

who advise MCI that they have been charged an MUF without having authorized MCI to provide long distance service, unless there is evidence that the customer continues to utilize the service. MCI will also use good faith efforts to reach out and provide credits or refunds to consumers who have previously made complaints regarding the imposition of MUF fees, if they have not already received credits or refunds.

In the Agreement, MCI states that over 90% of those who have complained about the MUFs received credits during the period from the first quarter of 2003 through the second quarter of 2005; MCI commits to review, where sufficient records exist, the complaints of those remaining complainants who have not received credits. MCI will issue credits to any persons so entitled pursuant to MCI's liberal credit policy.

2. Immediate \$1.3 Million Payment to State General Fund

MCI will also pay \$1.3 million to the state General Fund no more than 30 days after the Commission approves the Settlement Agreement. This amount is in addition to (1) the \$1 million credit/refund amount for the October 1, 2005-May 31, 2007 period, (2) any remainder from that credit/refund as shown in MCI's accounting due no later than September 30, 2007, and (3) any credits MCI made before October 1, 2005, which MCI estimates total an additional \$1 million.²

² In its October 13, 2005 *Supplement to Joint Motion for Approval of Settlement Agreement* (Supplement), MCI states that the total amount of MUF complaints during the time period January 1, 2003 through August 31, 2005 was 8,806, and that it issued credits in response to all but 313 of those complaints. MCI defines "complaints" as follows: "(a) any written correspondence from a California consumer seeking a credit or otherwise challenging MCI's long distance service that is either mailed directly to MCI or forwarded to MCI by a governmental agency or consumer service (*i.e.*, the

Footnote continued on next page

3. MCI's Acknowledgment of Problems and Commitment to Make Operational Improvements

MCI also acknowledges in the Settlement Agreement that its MUF practices were in error, and commits to make or retain already-implemented operational improvements to prevent the problems from recurring. MCI admits that the complaints of inappropriate MUF billings warranted investigation and action by the CPSD to ensure compliance with the law and to protect consumer welfare. Further, "MCI recognizes the need to . . . address the important concerns raised by California consumers and the CPSD's investigation," and has instituted and will maintain several changes to its practices, as described below.

We will require MCI – and Verizon California Inc. (Verizon), its successor in interest – to retain the operational changes.³

a. MCI Long Distance Cancellation Process

MCI has already implemented – and will continue to enforce under the Settlement Agreement – a new long distance cancellation process whereby its CSRs may cancel a consumer's long distance service upon the consumer's

Better Business Bureau) that processes consumer complaints, or (b) a verbal demand for credit, or an unequivocal verbal inquiry regarding MCI's long distance service that is received by the Company's Executive Offices." MCI states that the total amount of MUF credits issued in response to "complaints" from January 1, 2003 through August 31, 2005 is \$221,159. MCI also states that it has made refunds or issued credits related to MUF billings to consumers who did not make a complaint where MCI determined that the issuance of such credit or refund was appropriate.

³ As we discuss below, the Settlement Agreement is binding on MCI's successors in interest. In its Supplement, filed October 13, 2005 at 5, MCI states that the settlement "contains a provision [paragraph 33 of the Settlement Agreement, "Successors"] that . . . provides for the possibility of a merger [with Verizon], and it does not need to be amended." MCI states that the Verizon merger will not affect MCI's obligations under the Settlement Agreement. Supplement at 6.

request. Consumers who request cancellation will not be billed an MUF following the billing period in which the cancellation is requested.

To ensure that consumers are aware of the implications of cancellation, MCI will provide such consumers with multiple notices advising them to select a new carrier and stating rates may increase if they fail to do so.

Under MCI's new policy, although CSRs will be allowed to cancel service on request, customers will receive three verbal notices and one written notice to ensure the cancellation is not itself a "slam," and explaining the effects of cancellation.⁴ As MCI notes,⁵ multiple notices are important because a customer who cancels long distance service with MCI may thereafter pay "random" long distance rates. Random rates may be much higher than the customer's prior plan rates, and may vary based on the destination of the call.

Thus, MCI will have a liberal cancellation policy to ensure that customers who do not desire MCI service are not charged MUFs, but will also use multiple notices to ensure the cancellation is not itself a "slam."

**b. "LEC Recon[ciliation] List" and
Account Maintenance Installations**

MCI receives account maintenance information from LECs, which includes consumer name changes (*e.g.*, as a result of marriage) or address corrections.

⁴ First, the customer will receive a notice relating to the cancellation process and its potential effects verbally from MCI's CSR. Second, the customer will receive notice from a voice response unit. Third, MCI will give the consumer another verbal notice via a confirmation phone call within 48 hours of the original cancellation call. Finally, the customer will receive a confirmation notice in writing within 7-10 days of the original call to disconnect service. Supplement at 7.

⁵ *Id.*

Historically, MCI created a new customer account if it received account maintenance information for a telephone number for which no account existed. This practice caused erroneous MUFs and complaints. MCI commits that it shall not create new accounts which include MUFs based upon account maintenance information received from LECs. MCI also agrees not to create new accounts, with associated MUF charges, based upon “reconciliation lists” received from major LECs. These steps will reduce erroneous MUFs.

c. Good Faith and Commercially Reasonable Efforts

Under the Settlement Agreement, MCI will also use good faith and commercially reasonable efforts to enhance its billing policies and procedures, particularly with regard to preventing unauthorized MUFs. MCI will also continue to use such efforts with respect to identifying and crediting consumers charged an MUF where MCI determines that it is appropriate to do so. We discuss this provision in more detail below.

III. Discussion

A. Approval of Parties’ Settlement Agreement

Because all parties to the proceeding have agreed to the settlement, the case should be analyzed pursuant to the Commission’s settlement rules. In order for a settlement to be approved by the Commission, the settlement must be: (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest. (Commission Rule 51.1(e).) Each element is present here.

1. Reasonableness in Light of the Whole Record

The parties contend the Settlement Agreement is reasonable in light of the whole record:

The Parties believe that MCI has fully responded to the Commission's concerns as raised in the OII. MCI has acknowledged the seriousness of the concerns raised by the OII and that such concerns relate to inappropriate practices that should not occur and for which preventative measures should be taken. MCI has, in fact, instituted preventative and remedial measures designed to address these issues, has confirmed that it will continue to adhere to such measures, as set forth in the Settlement Agreement. Furthermore, MCI has, where appropriate, issued credits to customers and has committed to continue to do so. Finally, MCI has agreed to make a payment into the State General Fund. Therefore, the proposed Settlement Agreement is very closely based on the record developed by the Parties, and is reasonable because it effectively addresses the specific issues raised by the evidentiary record.

We agree that the settlement is reasonable in light of the record. MCI admits to problems in the past and commits to solutions to avoid them in the future. It will institute preventative and remedial measures to carry out its promise. It will repay individuals who were wronged. Finally, it will make a substantial payment to the General Fund. We find each of these steps warranted and reasonable based on the record before us.

Particular portions of the Settlement Agreement merit special discussion. With the responses and other information the parties have furnished, as discussed below, we are satisfied that these provisions are reasonable.

a. Paragraph 25: "Good Faith and Commercially Reasonable Efforts"

In her October 7, 2005 ruling, the Administrative Law Judge (ALJ) asked the parties to explain how the Commission could ensure enforcement of the provision in paragraph 25 of the Settlement Agreement requiring MCI to use

good faith and commercially reasonable efforts to enhance its billing policies and procedures, particularly with regard to identifying cause and ultimately preventing complaints regarding alleged

unauthorized billings of MUFs. MCI will also continue to use such efforts with respect to identifying and crediting consumers charged with an MUF where MCI determines that it is appropriate to do so.

The parties responded that, “If CPSD is not satisfied with the efforts undertaken by MCI, CPSD may make appropriate inquiries to obtain satisfactory responses as to whether MCI made reasonable good faith efforts to identify complainants and pay refunds or issue credits. In order to enforce this agreement, CPSD may schedule meetings or propound data requests as necessary. If there is a dispute, CPSD or MCI may file a petition to modify or enforce the decision.”⁶

We will add this requirement to the order we issue in this decision. Having a means of ensuring that MCI is complying with the foregoing provision helps support the conclusion that the settlement is reasonable.

b. Paragraph 30: Jurisdiction

Paragraph 30 of the Settlement Agreement states that, “By entering into this Agreement, MCI does not waive its right to contest the extent of the Commission’s jurisdiction or authority to impose any requirement of this Agreement in any other proceeding.” In expanding on this provision in the Supplement, MCI stated that, “In this case MCI did not and will not contest jurisdiction. Thus, the Commission can enforce the Settlement Agreement in this case without MCI raising concerns over jurisdiction.”⁷ We add an ordering paragraph to this decision making clear that the Settlement Agreement is enforceable before this Commission.

⁶ Supplement at 7-8.

⁷ *Id.* at 9.

c. MCI's Merger With Verizon

In her October 7, 2005 ruling, the ALJ asked MCI to comment upon the implication of the merger between Verizon and MCI, which this Commission recently approved.⁸ The ALJ asked "What will happen to the \$2.3 million payment if the Commission approves the MCI-Verizon merger?"

In the Supplement, the parties responded that "the Settlement Agreement contains a provision that already provides for the possibility of a merger, and that it does not need to be amended."⁹

Paragraph 33 of the Settlement Agreement states as follows:

33. Successors. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, subsidiary companies, divisions, units, agents, attorneys, officers, and directors.

Finally, MCI states that it "believes the transaction will not affect the regulatory authority of the Commission over any of MCI's regulated subsidiaries. Verizon's subsidiaries and the MCI Subsidiaries¹⁰ will continue to meet all of their obligations and commitments under the Commission's rules, regulations, and orders, including any orders entered in this matter."

We are satisfied by the foregoing evidence that the Settlement Agreement adequately binds Verizon.

⁸ Decision (D.) 05-11-029.

⁹ Supplement at 5.

¹⁰ The "MCI Subsidiaries" are "the certificated operating companies owned by MCI in California."

We find that the settlement is reasonable in light of the whole record.

2. Consistent With the Law

The proposed settlement is consistent with the law. Pub. Util. Code §§ 2889.5 and 2890 prohibit slamming and cramming. MCI has agreed to cease the slamming and cramming practices alleged in the OII, and to make operational improvements designed to better ensure compliance with the statutory prohibitions on slamming and cramming.

The proposed settlement is also consistent with recent Commission-approved settlements relating to telecommunications billing issues. In D.02-10-073 (approving a settlement of *Utility Consumers' Action Network (UCAN) v. Pacific Bell Telephone Company*, Case 02-01-007) and D.05-03-004 (approving a settlement of the *Investigation of Vycera Communications, Inc.*, Investigation (I.) 04-07-005), the carriers agreed, as MCI does here, to operational improvements in addition to monetary payments to the state General Fund. In D.02-10-073, for example, we found that a settlement met the public interest test because it contained provisions to prevent the improper practices from recurring, and provided a substantial penalty to ensure future compliance with all applicable laws.¹¹

We consider the following factors in setting the amount of a fine or penalty in connecting with slamming and cramming: (1) the severity of the offense; (2) the conduct of the utility, including the utility's conduct in preventing the violation, detecting the violation, and disclosing and rectifying the violation; (3) the financial resources of the utility; and (4) the totality of the circumstances

¹¹ 2002 Cal. PUC LEXIS 728, at *24.

in furtherance of the public interest. (*See, e.g., Investigation of Telmatch Telecommunications, Inc.*, I.99-09-001, D.03-06-034; *Investigation of Qwest Communications Corp.*, I.00-11-052, D.02-10-059.) In connection with the Settlement Agreement here, CPSD explains that it thoroughly explored each of these factors with MCI, and believes that the monetary payment set forth in the Settlement Agreement strikes an appropriate balance.

We agree, and find that the settlement is consistent with the law.

3. In the Public Interest

Finally, we find that the settlement is in the public interest. The proposed Settlement Agreement compensates consumers for unauthorized fees, protects them against future similar charges, and provides for a substantial payment to the General Fund.

As noted, MCI will pay \$1 million in refunds for the period October 1, 2005-May 31, 2007, *in addition to* amounts it paid before that period. It will apply its credit requirements liberally to ensure that all affected consumers are compensated. Moreover, MCI will take steps to ensure such charges do not recur. It has adopted a new long distance account cancellation policy. It has stopped purchasing lists that led to many erroneous MUFs. Finally, MCI will make a substantial payment to the state's General Fund. The state will receive \$1.3 million immediately, and additional payment if MCI's accounting of refunds (due no later than September 30, 2007) shows that the \$1 million refund amount was not fully paid out.

For the foregoing reasons, the Commission finds that the settlement in this proceeding is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The Settlement Agreement should therefore be approved.

IV. Categorization and Need for Hearings

The original investigation categorized this proceeding as adjudicatory and determined that hearings were necessary. At a June 29, 2005 prehearing conference in this case, the case was set for hearing on October 11-14, 2005. The motion we approve today was filed just before the hearing, and the hearing therefore did not occur.

V. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

VI. Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. All parties have agreed to the Settlement Agreement.
2. The Settlement Agreement pays out a substantial sum to customers charged erroneous MUFs, and makes an additional significant payment to the state General Fund.
3. The Settlement Agreement contains provisions designed to ensure that the conduct alleged in the OII does not recur.

Conclusions of Law

1. The settlement in this proceeding is reasonable in light of the whole record, is consistent with the law, and is in the public interest.
2. Hearings are not necessary.
3. The Settlement Agreement should be approved.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement appended to this decision as Appendix A and signed by all parties is approved.
2. The Settlement Agreement is binding on MCI, WorldCom, and MCI WorldCom (collectively, MCI), and its successors and assigns, including Verizon California Inc.
3. If the Consumer Protection and Safety Division (CPSD) is not satisfied with the efforts undertaken by MCI, CPSD may make appropriate inquiries to obtain satisfactory responses as to whether MCI made reasonable good faith efforts to identify complainants and pay refunds or issue credits. In order to enforce this agreement, CPSD may schedule meetings or propound data requests as necessary. If there is a dispute, CPSD or MCI may file a petition to modify or enforce the decision.
4. The Settlement Agreement shall be enforceable before this Commission.
5. No hearing was necessary for this proceeding.
6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.